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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 03-172
Competition in the Markets for the)
Delivery of Video Programming)

REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following reply comments in response to selected issues raised by commenters in the above-captioned matter.

The comments in this proceeding continue to confirm several fundamental observations. First, cable operators continue to dominate the multichannel video programming distribution ("MVPD") market. Measured in terms of market share, the cable industry's percentage of MVPD subscribers is still approximately 75%,¹ down only a single percentage point from approximately 76% last year. Furthermore, the Commission's most recent report to Congress on cable rates found that U.S. consumers experienced an 8.2% price increase in their monthly cable bills on average over the year ended July 2002, while the Consumer Price Index for the same period rose only 1.5%² -- that is, cable rates for this period increased almost *six times* the rate of inflation.

Such facts illustrate that the assertions by the large cable incumbents that "[t]he video marketplace is fully competitive,"³ and that Congress's vision of a competitive marketplace is

¹ See Comments of the National Cable & Telecommunications Ass'n (September 11, 2003) ("NCTA Comments"), at 8.

² FCC Report on Cable Industry Prices, 18 FCC Rcd 13,284 (rel. July 8, 2003), at ¶ 4.

³ NCTA Comments at 6.

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here,”⁴ are as wildly inflated as the rates for their services. It is evident that, by maintaining their market power through consolidation, clustering, and digital and broadband bundling, there has been no material change in the cable industry's MVPD market power since last year, when the Commission determined that “[c]able television still is the dominant technology for the delivery of video programming to consumers in the MVPD marketplace,”⁵ and that the market for the delivery of video programming “continues to be highly concentrated.”⁶

Second, the overwhelming record evidence is that Direct Broadcast Satellite (“DBS”) operators have continued to develop as cable's largest and most significant emerging competitors -- a conclusion that, as in years past, is reinforced by the cable commenters' own statements in this proceeding.⁷

Third, the record establishes that the cable industry is continuing to upgrade aggressively its plant and facilities to take advantage of its incumbency and unlimited ability to expand channel capacity. As the NCTA notes, digital cable offerings designed to compete with DBS are now available to over ninety percent of cable customers;⁸ cable-delivered video-on-demand and high definition television offerings are growing;⁹ interactive television services are being

⁴ Comments of Comcast Corporation (Sept. 11, 2003), at 4.

⁵ See 2002 MVPD Competition Report, CS Docket No. 02-145 (rel. Dec. 31, 2002), at ¶ 4.

⁶ *Id.* at ¶ 113.

⁷ See, e.g., Comments of Cox Communications, Inc. (Sept. 11, 2003), at 6 (singling out growth of DBS as a cable competitor); Comments of Comcast Corporation (Sept. 11, 2003), at 19-20 (same); NCTA Comments at 7-17 (same).

⁸ NCTA Comments at 51.

⁹ *Id.* at 45-53.

deployed;¹⁰ and bundled high-speed cable broadband offerings are estimated to be offered to more than 100 million subscribers before the end of 2004.¹¹

In light of these facts, the Commission should do all that it can to facilitate the continued growth of DBS as cable's principal MVPD competitor and thereby bring to consumers the benefits of increased MVPD competition. One key step toward this goal is to permit DIRECTV to continue to expand its business, grow and innovate.

As mentioned in its initial comments, DIRECTV's parent companies, Hughes Electronics Corporation ("Hughes") and General Motors Corporation ("GM"), have agreed that, subject to Commission and Department of Justice approval, Hughes will be split off from GM and that The News Corporation Limited ("News Corp.") will acquire a 34% interest in Hughes.¹² The proposed transaction will combine News Corp.'s vision, expertise and energy with Hughes's assets and talents, and in particular, will better permit DIRECTV to undertake strategic initiatives that may require additional capital and other resources – initiatives such as the deployment of enhanced interactive and digital video recorder capabilities; an even greater expansion of satellite-delivered local broadcast channels to more local television markets; and the retransmission of more satellite-delivered high-definition television programming.

Indeed, as the parties to the transaction have worked intensively to refine new business plans for Hughes as a result of its affiliation with News Corp., they have identified concrete, merger-specific public interest benefits of the transaction that will include:

- By the end of 2004, DIRECTV will provide satellite-delivered local broadcast channels in 30 more designated market areas ("DMAs") or offer 30 more

¹⁰ *Id.* at 52.

¹¹ *Id.* at 56.

¹² See General Motors *et al.*, Consolidated Application for Authority to Transfer Control, MB Docket No. 03-124 (filed May 2, 2003).

channels of HDTV programming, or some combination of the two, above and beyond what had been previously funded, projected or planned by Hughes/DIRECTV.

- By the end of 2004, utilizing new “middleware” provided by a subsidiary of News Corp., DIRECTV will first release a new user interface for its set-top boxes (“STBs”) and then introduce an attractive suite of ITV services enabled by this middleware, including interactive news, interactive sports, and interactive weather, traffic, and games.
- By the end of 2005, DIRECTV will offer STBs with very competitively priced, fully integrated digital video recorders (“DVRs”), which will result in the deployment of at least one million such STBs each year thereafter.¹³

In the longer term, Hughes/DIRECTV and News Corp. will design and launch a new generation of satellites as early as 2006 and no later than 2008 that will provide much greater satellite capacity for DIRECTV’s services. This effort – which involves a commitment of approximately \$1 billion that has not been authorized by Hughes’ current owner, GM – will enable DIRECTV to provide local channels in all 210 DMAs¹⁴ and to transmit more HDTV programming to subscribers, including local channels in HDTV format in select markets. Thus, Commission approval of the News Corp.-Hughes transaction is critical to ensuring DIRECTV’s continued presence as a dynamic, innovative and competitive force in the MVPD market.

The record in this proceeding to date also is undisputed that, in order for DBS to remain and grow as a viable cable competitor, the Commission must preserve the very high reliability

¹³ *Ex Parte* Letter to Marlene H. Dortch, MB Docket No. 03-124 (Sept. 22, 2003), at 2.

¹⁴ The National Rural Telecommunications Cooperative (“NRTC”) has called for the Commission to require DBS satellite carriers to retransmit all local broadcast signals in all 210 DMAs by January 1, 2006. Comments of the NRTC (Sept. 11, 2003), at 5-7. DIRECTV does not believe that the Commission would have the statutory authority to mandate such a requirement, but in any event, such a requirement is unnecessary as a matter of public policy. If the News Corp.-Hughes transaction is approved, DBS consumers should receive, from DIRECTV at least, a “seamless, integrated local channel package in all 210 DMAs” as early as 2006 and no later than 2008. *Ex Parte* Letter to Marlene H. Dortch, MB Docket No. 03-124 (Sept. 22, 2003), at 4.

and availability of DBS service to U.S. consumers.¹⁵ In this regard, DIRECTV remains gravely concerned by the Commission's actions to date in authorizing a proposed ubiquitously deployed terrestrial service to co-exist with both DBS systems and non-geostationary orbit fixed-satellite service systems in the 12.2-12.7 GHz band, which is the "mission critical" frequency band used by DBS operators to downlink programming to consumers. The record evidence provided by the proposed terrestrial system operators themselves, as well as by DBS operator studies and an independent study by the MITRE Corporation, strongly indicates that the introduction of ubiquitously-deployed terrestrial systems at 12 GHz will seriously degrade millions of DBS subscribers' service.¹⁶ Such interference will seriously undercut the competitive advantages in reliability, sound and picture quality that DBS providers use affirmatively to differentiate themselves in the MVPD marketplace, and to offer meaningful cable-competitive choices to current and potential MVPD subscribers.

Finally, the Commission should reject the suggestion of Paxson Communications Corporation ("Paxson") that the Commission impose "full digital multicast must-carry" obligations on DBS providers.¹⁷ Nowhere does the Communications Act authorize the imposition of such a requirement. Furthermore, the Commission has rightly declined to require DBS operators to carry the high-definition signals of television broadcast stations pending the resolution of a number of issues surrounding the digital carriage regime for DBS.¹⁸ Issues

¹⁵ See DIRECTV Comments at 4-6; SBCA Comments at 11-12.

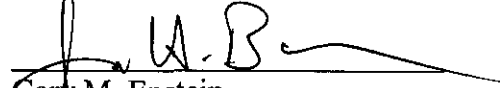
¹⁶ See DIRECTV Comments at 4-6; SBCA Comments at 11.

¹⁷ Comments of Paxson Communications Corporation (Sept. 11, 2003). While Paxson's comments are focused primarily on the imposition of such a carriage obligation on cable operators, Paxson requests that this mandatory multicasting carriage requirement be imposed on satellite television providers "to the extent possible," as well. *Id.* at 19.

¹⁸ *In the Matter of Guenter Marksteiner v. EchoStar Communications Corp., Request for Carriage of Station WHDT-DT, Stuart, FL*, DA 03-139 (rel. Jan. 17, 2003).

surrounding the forced carriage of multicast digital local broadcast signals by DBS providers fall into the same category. Paxson's proposal should be rejected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. M. Epstein", written over a horizontal line.

Gary M. Epstein
James H. Barker
Tonya Rutherford
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

Counsel for DIRECTV, Inc.

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